Supreme Court, U. S.
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No. 788

In the Supreme Court of the United States

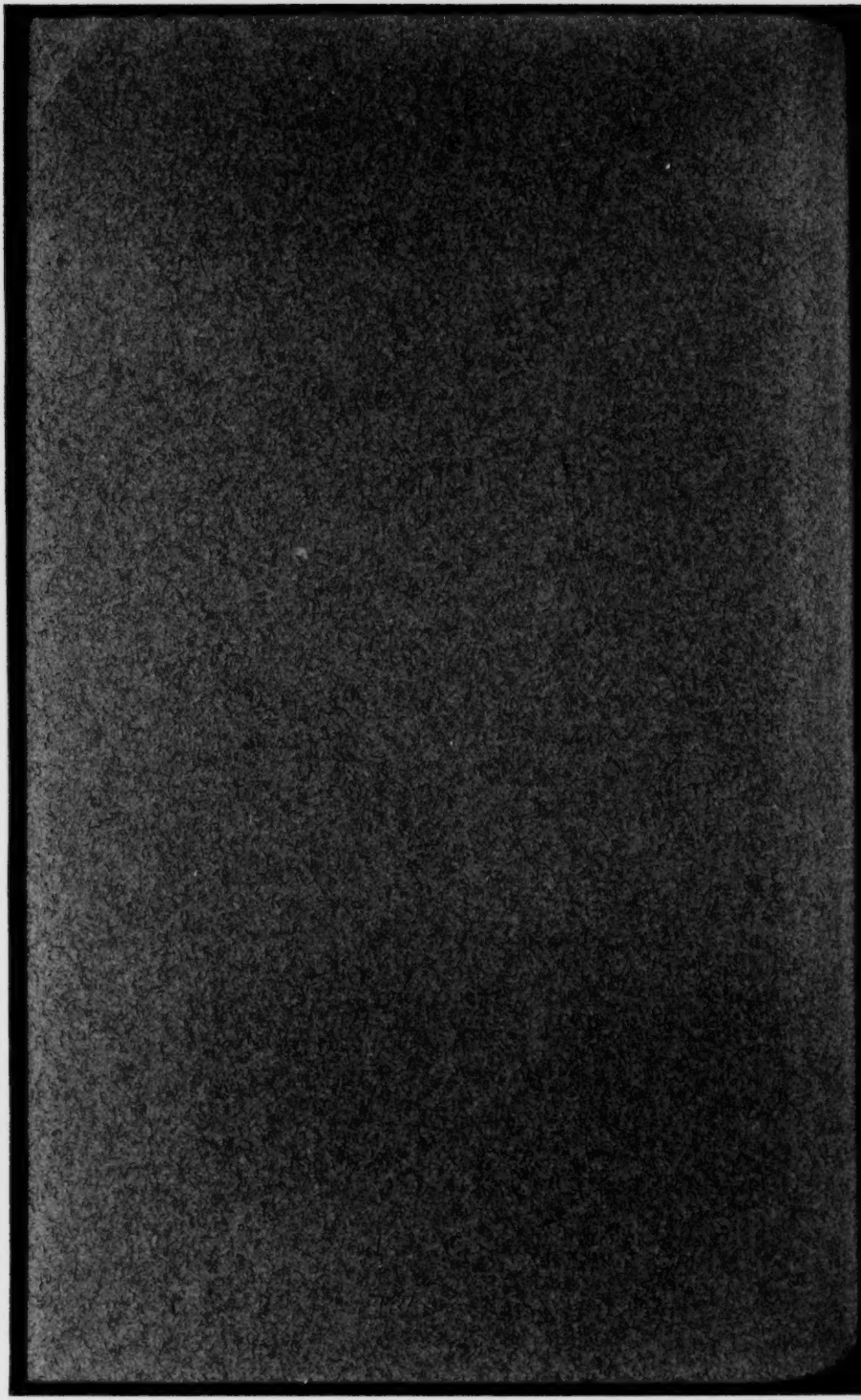
OCTOBER TERM, 1940

GENERAL MOTORS CORPORATION (AS TRANSFEREE IN COMPLETE LIQUIDATION OF WILLYS-OVERLAND, INC.), PETITIONER

[illegible]

ON PETITION FOR A WRIT OF CERTIORARI TO THE [illegible]

BRIEF FOR THE [illegible]



In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 738

GENERAL MOTORS CORPORATION (AS TRANSFEREE IN COMPLETE LIQUIDATION OF WALTER J. BEMB, INC.), PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court below (R. 21–27) is reported in 35 F. Supp. 466.

JURISDICTION

The judgment of the Court of Claims was entered November 12, 1940 (R. 27). The petition for a writ of certiorari was filed February 1, 1941 (R. 27). The jurisdiction of this Court is invoked under Section 3 (b) of the Act of February 13, 1925, as amended by the Act of May 22, 1939.

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QUESTION PRESENTED

Whether the capital stock tax provisions of the National Industrial Recovery Act and of the Revenue Act of 1934 are unconstitutional.

STATUTES INVOLVED

The applicable statutory provisions are set forth in the Appendix to the Government's brief in opposition in the case of *United Motor Service, Inc.* v. *United States,* No. 739, this Term.

STATEMENT

The court below decided this case upon the petition and demurrer thereto (R. 21). From the petition, the following facts appear:

Petitioner, a corporation, is the successor to Walter J. Bemb, Inc., which, during the taxable periods, was engaged in the business of selling automobiles, parts, and accessories, and servicing automobiles (R. 1). Walter J. Bemb, Inc., was organized as a corporation on May 5, 1933, and commenced to do business on May 20, 1933 (R. 3).

Prior to the time for filing the capital stock tax return of Walter J. Bemb, Inc., for the year ending June 30, 1933, it was estimated that earnings of 30% on invested capital could be expected. However, hoping that business conditions would improve, it was determined to declare a value for capital stock tax purposes which would permit net earnings of approximately 50% on the in-

vested capital in any year without incurring any liability for the excess profits tax. The same method was used in determining the value to be declared for the year ended June 30, 1934. The capital stock tax value was accordingly declared on the return for the year ended June 30, 1933, in the amount of $500,000, and for the year ended June 30, 1934, in the amount of $544,000 (R. 4).

Walter J. Bemb, Inc., filed capital stock tax returns for the years ending June 30, 1933 and 1934, showing the above values for its capital stock, and paid the taxes shown thereon to be due. It later filed timely claims for refund, asserting that the statutory provisions imposing the capital stock tax were unconstitutional because, among other reasons, the tax was retrospective in its application and because the declaration of value for one year was binding for other years (R. 4–5, 9–12). The claims for refund were rejected (R. 5), and the present action was then begun. The Government's demurrer to the petition was sustained by the Court of Claims (R. 27).

ARGUMENT

This case involves the same question as is presented in *United Motor Service, Inc.* v. *United States,* No. 739, present Term. Reference is accordingly made to the Government's brief in opposition in that case for a statement of the grounds upon which we oppose the granting of a writ in this case.

CONCLUSION

The petition should be denied.
Respectfully submitted.

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